

NOT PRECEDENTIAL - NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CRIM. NO. 2004-0160
)	
WALFORD AVERY LESLIE and)	
MALCOLM MARIE,)	
Defendants.)	
_____)	

APPEARANCES

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MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on Defendants Walford Avery Leslie ("Leslie") and Malcolm Marie's ("Marie") Motion to Suppress Statements and Evidence Obtained Subsequent to Their Arrest. Hearing on Defendants' motion was held on April 25, 2005. At the conclusion of the evidentiary hearing, the Court ordered counsel to submit their arguments in writing. Defendants'

brief was submitted on or about May 26, 2005. The Government's brief was submitted on or about July 12, 2005. For the reasons expressed below, this Court will deny Defendants' motion.

I. Evidence

Agent Dave Levering ("Levering"), Senior Special Agent for Homeland Security, Immigration and Customs Enforcement ("ICE") on St. Croix, testified that at approximately 7:15 a.m. on September 20, 2004, he traveled from his home to the area of Grapetree Bay ("Grapetree") in response to reports from residents that suspected illegal aliens had been sighted in the area. Transcript ("Tr."), pgs. 39-41. Levering testified that he was familiar with the Grapetree area and that it was an area known for alien smuggling. Tr., p. 40. Levering also testified that from experience he knew Haitians were frequently smuggled into St. Croix. Tr., p. 39.

Upon arrival at Grapetree, Levering came upon five individuals walking in the westbound lane of South Shore Road. Tr., pgs. 40-41. Two of the individuals were Defendants Leslie and Marie. Tr., pgs. 42 & 44. Levering, who was traveling east on the road, turned on the blue lights of his government vehicle as soon as he saw the men, four black males and one white male. Tr., p. 41. Levering maneuvered his car into the westbound traffic lane in order for the men and any oncoming traffic to see the strobe lights on his vehicle. Tr., pgs. 90-92. Levering testified that he maneuvered his vehicle in such a way so the men could see him and to prevent any oncoming traffic from hitting himself or the men on the road while he investigated the situation. Tr., pgs. 91-92.

Levering was wearing blue ICE fatigues with "Police" written on the sides. Tr., p. 42. The men, including Defendants, were wearing clothing that appeared damp or wet. Tr., p. 43. Their clothing was inconsistent with beach wear. Id. Levering further testified that a few of the men had backpacks. Tr., p. 44. When Levering exited his vehicle and walked over to the five males, the white

male, Defendant Leslie, immediately threw his hands in the air and yelled “I’ve been kidnaped! I’ve been kidnaped!” Tr., p. 42. As Levering approached the men, he asked Leslie what happened and how he had been kidnaped. Id. Leslie and the others (three of whom did not speak English) responded by pointing east and stating that there was a boat in the area. Tr., p. 43. The area the men pointed to was not near a legal point of entry, authorized by customs and border protection. Tr., p. 50. The closest port of legal entry was Gallows Bay Marina (“Gallows Bay”). Id. Additionally, Defendant Leslie indicated that a bunch of people got on his boat in Dominica. Tr., p. 69. Levering testified that based on the statements and proximity of the men he did not believe Leslie’s statement that he had been kidnaped. Tr., p. 47.

At that point, Levering asked if anybody spoke English. Tr. p. 44. Defendant Leslie spoke to him in English. Id. Levering further testified that Defendant Marie spoke a little bit of English and that Marie indicated that he had been on the boat as well. Id. Levering asked the other three individuals where they were from. Id. The other three men could not understand Levering, so Levering said “Haiti? Haiti?” Id. The men nodded yes. Id. Levering testified that at that point he believed he had three illegal aliens in front of him. Id. Levering then heard Officer Aldemar Santos on the radio saying he had other detainees in the immediate area. Tr., pgs. 12, 13 & 44.

Levering put the men in the back of his pickup truck, handcuffed them for his safety and transported them about a half mile to where additional suspected illegal aliens were located and where an ICE vehicle was to retrieve the men to transport them to ICE headquarters. Tr., pgs. 44-45.¹ Defendants testified that at the ICE office Agent Levering presented them with the advise of

¹ Defendants testified that immediately upon arriving at the scene Agent Levering exited his vehicle, drew his gun and ordered Defendants to the ground and handcuffed them. The

rights form but that they did not read the form before signing it. Tr., pgs. 103 & 115. However, Defendant Leslie also testified that Levering advised him of his rights back at Grapetree prior to transporting him to ICE headquarters. Tr., pgs. 120-21. Further, Defendant Marie testified that the oral advisement of Miranda rights came immediately after he signed the Miranda rights form. Tr., p. 103.

Defendants now challenge the legality of their arrest and move to suppress both evidence derived from and statements made subsequent to their arrest.

II. Discussion

The Fourth Amendment to the United States Constitution protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.”² U.S. Const., amend. IV. The protections of the Fourth Amendment apply to seizures that do not amount to traditional arrests. See Terry v. Ohio, 392 U.S. 1, 16-19 & n.15 (1968). Under Terry, a police officer may detain and investigate citizens when he has a reasonable suspicion that “criminal activity may be afoot.” Id. at 30. The constitutionality of such seizures depends upon the totality of the circumstances. Id. at 19; see also United States v. Ubiles, 224 F.3d 214, 216 (3d Cir. 2000).

In this matter, the totality of the circumstances leads to the conclusion that Agent Levering had reasonable suspicion to stop and inquire as to the legality of Defendants’ entry into St. Croix. Levering had received reports from residents that suspected illegal aliens were seen in the Grapetree

Court, after listening to the testimony of each witness and observing their demeanor, concludes that Levering’s account of the facts is credible.

² The Fourth Amendment has been extended to the United States Virgin Islands by Section 3 of the Revised Organic Act of 1954, 48 U.S.C. § 1561, entitled “Bill of Rights.”

area. From his experience, Levering knew the Grapetree area as an area in which aliens were often smuggled. Moreover, when Levering arrived on the scene he witnessed the men carrying backpacks and wearing damp or wet clothing that was inconsistent with beach wear.

There is little doubt that Defendants were “seized” once Levering placed the men in his truck and handcuffed them for transport to ICE headquarters. Defendants’ seizure in this manner is akin to a warrantless arrest in a public place. Accordingly, a showing of probable cause by the Government is required to justify the seizure. Florida v. White, 526 U.S. 559 (1999). In this matter, the Court finds that the reasonable suspicion to investigate developed into probable cause to arrest Defendants after Levering stopped to investigate the situation.

“‘[P]robable cause’ to justify an arrest means facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” Michigan v. DeFillippo, 443 U.S. 31, 37 (1979). In this matter, probable cause is demonstrated by the foregoing facts as well as the following. When Levering exited his vehicle, Defendant Leslie yelled that he had been kidnaped and stated that some men had gotten on his boat in Dominica. However, the demeanor and proximity of the men was inconsistent with Leslie’s kidnap story. Moreover, three of the men indicated that they were Haitian. Levering knew from his experience that Haitians were one of the nationalities typically smuggled into St. Croix. Additionally, the men indicated that the boat that had brought them to St. Croix was located in an area far from any legal port of entry. Levering had also heard on his radio that Officer Santos had detained additional suspected illegal aliens nearby. Accordingly, the Court finds that based on the totality of the circumstances, Agent Levering had probable cause to arrest Defendants. Moreover,

given the fact that the men, including Defendants, had indicated that they came from a nearby boat, Levering had reason to believe that Defendants would likely escape if they were not taken into custody. See Lee v. Immigration and Naturalization Service, 590 F.2d 497 (3d Cir. 1979).

Finally, there is no evidence to suggest that Defendants were subject to a custodial interrogation prior to being Mirandized. See Alston v. Redman, 34 F.3d 1237, 1244 (3d Cir. 1994) (both a custodial setting and official interrogation are necessary to invoke a defendant's Miranda rights). Although Defendants were in custody once they were handcuffed and put in the back of Levering's truck for eventual transport to ICE headquarters, there is no argument from Defendants that they were interrogated prior to being advised of and waiving their Miranda rights. Accordingly, for this reason as well the Court will not suppress their statements.

III. Conclusion

In sum, the Court finds that Agent Levering had probably cause to arrest Defendants. As such, the statements and evidence obtained from Defendants subsequent to their arrest and waiver of their Miranda rights shall not be suppressed.

ENTER:

DATED: July 28, 2005

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

ATTEST:
Wilfredo F. Morales
CLERK OF THE COURT

By: _____
Deputy Clerk

cc: Honorable George W. Cannon
Alphonso Andrews, AUSA
Jomo Meade, Esq.
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Margaret Brown